

INITIAL STATEMENT OF REASONS:

This proposed regulation implements provisions governing inmate marriages. According to Penal Code (PC) Section 2601(f), persons incarcerated in a State prison have a civil right to marry. Currently, there is no language contained within the California Code of Regulations, Title 15, regulating inmate marriages. In 1991, the Fifth District Court of Appeals' Tooma v. Rowland resulted in a preemptory writ of mandate directing the Department to cease enforcing those portions of its Department Operations Manual that require compliance with the Administrative Procedure Act (APA). It has been determined that the issue of inmate marriages is regulatory as described in Government Code

Section 11342(g) and falls within the court mandate of Tooma v. Rowland. Therefore, the adoption of this regulation is necessary. The adoption of regulations will provide a means of:

- Complying with an inmate's right to marry as prescribed by the PC Section 2601(f).
- Complying with the Tooma v. Rowland court mandate, which relates to provisions of the APA.
- Informing staff and inmates on departmental guidelines related to inmate marriages.

The Department of Corrections must determine that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected private persons than the action proposed.

New Section 3216(a) is adopted to state inmates and staff that inmate marriages shall be conducted in accordance with the provisions of law and these regulations. The purpose of this section is to provide the foundation for which these regulations were developed.

New Section 3216(b) is adopted to state that inmates and staff that inmate marriage requests shall be processed through the inmate's caseworker or designated staff person, and the caseworker or designated staff person shall provide all necessary information to the county clerk or clergy person. The purpose of this section is to provide information to those persons that may be affected by its contents how and by whom marriage requests shall be processed.

New Section 3216(c) is adopted to state that the performance of inmate marriages shall be conducted by individuals authorized to do so, i.e., those persons designated by Family Code Sections 400 and 402. The purpose of this section is to inform those persons that may be affected by the contents what individuals may solemnize marriages.

New Section 3216(d) is adopted to state what definition of chaplain is used; that the institution/facility chaplains may conduct inmate marriages; that institution/facility chaplains shall be required to process a request or facilitate a marriage if they are so designated; that institution/facility chaplains shall establish religious criteria that inmates shall meet and such criteria shall be provided to the chaplain's supervisor. The purpose of this section is to inform those persons that may be affected by its contents that institution/facility chaplains may perform inmate marriages.

New Section 3216(e) is adopted to state that attendance at inmate marriage ceremonies shall be limited to certain individuals. The purpose of this section is to inform those persons that may be affected by its contents with information on who may attend inmate marriage ceremonies.

The necessity for adopting these regulations are based on the above stated reasons.